

January 23, 2015

Stephen P. Deitsch
City Attorney
City of Arcadia
2855 E. Guasti Road, Suite 400
Ontario, CA 91761

Re: Your Request for Informal Assistance
Our File No. I-14-195

Dear Mr. Deitsch:

This letter responds to your request for advice regarding the gift and travel provisions of the Political Reform Act (the “Act”).¹

Please note that The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71) and our advice is based solely on the facts provided. Because your inquiry does not name specific city officials who will be going on the trip, the places being visited, the donor providing payments, and the amount of the payments involved, we are treating your request as one for informal assistance.²

QUESTIONS

1. May the City expend city funds for the travel expenses of City officials and their spouses to visit China and Taiwan, including “culturally-important” sites in those countries, in furtherance of a potential sister city relationship?

2. Does exploring a sister city relationship and studying the nature of public services in a foreign country constitute “official agency business” under Regulation 18950.1?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

3. May City officials accept gifts of travel, including meals and lodging, from local Taiwanese and Chinese governmental entities?

CONCLUSION

1. The Act does not address how a city may expend city funds except that payments made to officials that are not a lawful expenditure of public moneys are gifts to the officials from the city under Regulation 18944.3. In addition, in some circumstances where money is actually received from a private donor and given to the city as a means to benefit certain officials, it may still be considered a gift to those officials as discussed below.

2. No. Under the facts presented, funds collected for international travel that include the exploration of a potential sister city relationship in a foreign country does not constitute "official agency business" pursuant to Regulation 18950.1.

3. Yes. Subject to the requirements of Section 89506, the gifts of travel (including meals and lodging) from Taiwanese and Chinese governmental entities may be accepted and are not subject to limits. However, the payments would be reportable on an official's Statement of Economic Interests (Form 700) and may result in a conflict of interest for the official in future decisions that may affect the donors.

FACTS

Mayor John Wuo is participating in organizing a trip to China, which will be attended by various officials and representatives of the City. The City has a significant Chinese-American and Taiwanese-American population, which constitutes more than 50 percent of the residents. The trip is scheduled to take place in March 2015 and is expected to include a 12 or 13-day itinerary with visits to both Taiwan and China. A detailed itinerary was not included.

You stated that the trip will consist of visits to foreign cities demographically and culturally similar to Arcadia (smaller suburban cities located near major metropolitan areas) in an effort to explore a sister city relationship. The Chinese consulate is assisting in making arrangements for meetings with foreign local government officials. You currently do not know which host cities will be proposed as possible sister cities.

Your November 26, 2014 letter providing more detail about the trip states that it will be funded by one or more for-profit Chinese corporations. You state that the "donors intend to make an unencumbered donation to the City that will not be conditioned upon the City using the donation for the identified travel expenses." The private donations may be in the amount of \$50,000 to \$60,000. The City will accept the funds and will determine how the funds will be spent, including which City officials will constitute the City's delegation for the trip. The delegation is expected to include City council members, City staff, and their respective spouses. The delegation may also include community members who are not City officers or employees.

You state that “[t]he City Council’s determination will include a finding that the expenditure serves a public purpose.” You added that the purpose of the trip will be to provide education, understanding, and insight into the Chinese culture, and thus provide City officials with a better understanding of the City’s Chinese-American constituency.

The current itinerary only includes the large cities to which the delegation will be traveling and does not include specific activities. However, you mentioned in our telephone conversation of November 26, 2014 and in your follow-up letter of the same date that the trip will include visits to local facilities such as parks, libraries, and monuments. It will also include trips to national parks and “other significant cultural places,” such as the Great Wall and Tiananmen Square.

Your facts indicate the tours will be used to understand development and land use in these cities, particularly any culturally unique aspects. The City will use the information obtained to market and seek investment into the City from Chinese and Taiwanese developers looking for real estate investment opportunities within the City. Also, you state that the City will be able to better serve its constituency in its planning decisions by better understanding the cultural aspects of urban design.

The City’s delegates also intend to meet with municipal leaders from cities within China and Taiwan to better understand the nature of the services provided by these cities.

Because the trip will involve the development of relationships with foreign officials, there will be a social aspect to the trip, including meals and activities with representatives of local governments.

You ask whether activities that are not specifically identified as “official agency business” in Regulation 18950.1(c) may nevertheless be “of the same kind of purpose as those listed.” You also seek advice regarding the extent to which activities related to exploration of a sister city relationship constitute official agency business.

Additionally, you ask whether expenses for the spouses of the City Officials are permissible under Regulation 18950.1(c). You state that attendance of spouses may help to further enhance and strengthen the development of relationships between the City and foreign officials.

The City’s expense reimbursement policy “allows for reimbursement of any expense that is related to a ‘municipal affair’ and/or which ‘serves a public purpose.’” In approving this trip, the City Council would find that the trip is “both a municipal affair and serves a public purpose.” The policy generally allows for reimbursement of travel expenses including transportation, meals, and lodging.

In addition, the City’s expense reimbursement policy “allows reimbursement for the purchase of tickets for the significant other of a City official to attend community events at

which attendance by the official and his/her significant other is generally expected.” The policy does not specifically indicate application to international events. However, it does not prohibit it. You state that at the cultural events, officials from host cities will be accompanied by their spouses, and it is expected that City officials will also be accompanied by their spouses. You state that “[i]n approving the travel, the City would find that inclusion of spouses would serve the public purpose of fostering ties with the host cities.”

ANALYSIS

1. May the City expend city funds for the following: (a) To attend “culturally-important facilities” in furtherance of a potential sister city relationship? (b) For the travel expenses of City officials’ spouses attending the same trip?

With few exceptions, the Act does not regulate the proper use of public funds. However, other laws prohibit the misuse of public funds and property for political or personal use. (See e.g., Penal Code Section 424; see also, *Stanson v. Mott* (1976) 17 Cal.3d 206; *League of Women Voters v. Countywide Crim. Justice Coordinating Com.*(1988) 203 Cal.App.3d 529.)

For purposes of the Act, payments made to an official that are not lawful expenditures of public moneys are personal gifts to the officials from the city under Regulation 18944.3. In addition, in some circumstances, where money is actually received from a private donor and given to the city as a means to benefit certain officials, it may still be considered a gift to those officials as discussed below.

You have not provided sufficient information for us to apply these rules. For example, relevant to the analysis might be the following:

1. Was the “unrestricted” donation intended to be used for the officials’ Chinese trip?
2. Was there any informal agreement that the funds would be used for that purpose?
3. How did the city make the decision to use the donated funds for this trip to China rather than to supplement some other responsibility of the city’s general fund or budget?
4. What alternatives were considered for the use of the funds?
5. Was this decision made in an open public meeting?
6. Will the city officials meet with these donors in the context of the trip to China?

Obviously, if the payments were actually donations to the recipient officials, we would very likely consider these payments direct gifts to the officials subject to limits, reporting, and conflicts of interest. Not having those facts, we do not reach a conclusion on the application of the Act to these payments.

2. Does exploring a sister city relationship and studying the nature of public services in a foreign country constitute “official agency business” under Regulation 18950.1?

The Act defines a gift as any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. (Section 82028(a).)

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials:

1. Gift Limit. The Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$460 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to city council members and other officials. (See Regulation 18940.1(b).)

2. Gift Reporting. The Act also imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. (Sections 87200 - 87210.)

3. Conflicts of Interest. Lastly, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$460 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e); Regulations 18700 & 18703.4.)

Under Regulation 18950.1, the Commission identified certain payments that do not confer a personal benefit on the official and are for the purpose of facilitating the public’s business. The regulation was intended to address common situations where public employees were performing functions that were part of their ordinary job assignments, such as providing training at seminars, or making other job related appearances as assigned by their employer.

The following requirements must all be met for the exception to apply:

“(1) The payment must be made directly to or coordinated with the government employer. (Regulation 18950.1(a)(1) and (b).)

“(2) The payment must be used for official agency business. (Regulation 18950.1 (a)(2) and (c).)

“(3) The government employer must determine the official who will make use of the payment. (Regulation 18950.1(a)(3) and (d).)

“(4) The payment must not provide a personal benefit to the official who makes use of the payment. (Regulation 18950.1(a)(4) and (e).)

“(5) The duration of the travel is limited to that necessary to accomplish the purposes for which the travel was provided as determined by the governmental employer using the same standards imposed for travel paid with government funds. (Regulation 18950.1(a)(5).)

“(6) The government employer must report the payment as specified in Regulation 18950.1(f).”

A payment under Regulation 18950.1(c) is used for official agency business when made under any of the following circumstances:

“(1) The payment is made pursuant to a provision in a contract that requires the contracting party to pay any expenses associated with any required governmental travel resulting from the governmental agency’s participation in the contract and the payment is used for that purpose.

“(2) The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform.

“(3) The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer’s functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members.

“(4) The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer’s functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event.

“(5) The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official’s job duties and the payment is provided by an organization that commonly provides such training.

“(6) The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting.

“(7) The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official’s knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase the product pursuant to the jurisdictional authority of the official’s governmental employer.”

As stated above, the regulation was intended to provide a means to carry out substantive business activities related to the core business of an agency that required travel expenses, and allowed the agency to, in effect, accept reimbursement for what it would have normally provided. While we have said that travel for “sister city” relationships fall within the broad definition of “legislative or governmental” purpose under Section 89506, Regulation 18950.1 was not intended to apply so broadly. Official agency business does not have the same meaning as “legislative or governmental purpose.”

Under the facts presented, we cannot find that payments made by private companies to the City to be used for international travel and accommodations in China for public officials and their spouses fall within the intended parameters of Regulation 18950.1, even if part of the trip involves sister city relationships.

3. May City officials accept gifts of travel, including meals and lodging, from local Taiwanese and Chinese governmental entities?

Generally, transportation, lodging and food paid for by a third party are reportable gifts under the Act. Therefore, absent an exception, the value of all travel-related expenses to China that a City official receives is a reportable gift. (Section 82028.) Section 89506 states that “[p]ayments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

“(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which

substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

You ask if City officials may accept gifts of travel, including meals and lodging, from local Taiwanese and Chinese governmental entities while seeking a sister city relationship.

Travel related to establishing sister city relationships promote the relationship between two regions and help establish cultural and economic connections. Therefore, the trip would be reasonably related to a legislative or governmental purpose under Section 89506.

Travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, are not prohibited or limited if they are provided by certain specified sources, one of which is a foreign government. (Section 89506(a)(2).)

Therefore, the cost of a City official’s travel paid by the foreign government is exempt from the gift limit. However, the payments are reportable gifts³ on the official’s Form 700 and may subject the official to disqualification under the Act’s conflict of interest rules. (Section 87103.) In addition, any payments made for items other than transportation, and related lodging and subsistence, may be considered a “reportable gift” subject to the gift limit and conflict of interest provisions of the Act.

To the extent that the donor of the travel payment is a for-profit corporation, Section 89506 would not apply. Your facts indicate that the bulk of the travel payments will be made by one or more for-profit foreign companies.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace
Assistant General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

³ See Regulation 18950.